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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re C.B., et al., Persons Coming Under
the Juvenile Court Law.

B218193
(Los Angeles County
Super. Ct. No. CK65015)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Stanley Genser, Commissioner. Affirmed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, Jacklyn K. Louie, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

In this post-termination of parental rights appeal, D.B. (father) appeals from the dependency court's order issuing a permanent restraining order against him, protecting his two biological children, C.B. and D.B., their half-sibling M.A., and her prospective adoptive parent/paternal grandmother, Patricia S. Father contends there was insufficient evidence to support the issuance of a restraining order against him and that the order was overbroad. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prior to his release from state prison, father's parental rights to his two children were terminated in March 2009.¹ In May 2009, father filed an appeal from the order terminating parental rights, which we dismissed on October 15, 2009, pursuant to *In re Sade C.* (1996) 13 Cal.4th 952. While the appeal was pending, on June 10, 2009, the dependency court issued a restraining order, set to expire three years later, preventing father from having any contact with, or coming within 100 yards of, his two children, their half-sibling, and her prospective adoptive parent, Patricia S.

The application and affidavit for restraining order filed by Patricia alleged that starting on or about April 25, 2009, she had received approximately eight messages on her cell phone voicemail from a man whose voice she recognized as father's. The messages stated "I am going to get you," and/or "I am going to kill you," and/or played the sound of repeated gunfire. The affidavit further alleged that father was making these threatening calls because he mistakenly believed that his two children were in Patricia's custody. Patricia had obtained a prior permanent restraining order against father that expired in May 2008 while father was incarcerated.

¹ The petition sustained as to all three children alleged that father and the children's mother were cultivating marijuana and cocaine for sale in the children's home, had a loaded gun within access of the children, and that father had a criminal history of felony convictions for the transport/sale of controlled substances.

At the hearing on the petition for the restraining order, Patricia's attorney submitted three documents—(1) the petition for restraining order; (2) a last minute information for the court, which stated that Patricia had informed the social worker on April 27, 2009 that she had been receiving threatening messages, including the sounds of gunshots on her voicemail, and that she had reported the incidents to the police; and (3) a police report stating that she had received “several unwanted phone calls from unk sus(s)” on April 25, May 3 and May 4, 2009.

Father's attorney submitted a letter from the Department of Corrections and Rehabilitation, Division of Adult Parole Operations, which stated that father “was in custody from 3-9-07 until his parole on 5-2-09.” Though not under oath, father related to the court that every telephone call made from prison is monitored and recorded. Father's attorney requested that the petition be dismissed, and stated that father would agree instead to a “stay away order” from Patricia.

Patricia took the stand and testified that the basis for her prior restraining order against father from 2004 to 2008 was that he was calling her home and threatening her because she was seeking custody of M.A., whom father wanted returned to her mother. Father's name and cell phone number appeared on her phone when he called. Patricia was seeking custody of M.A., because there was drug abuse and guns being shot off in the house around the child. Patricia did not receive any more threatening calls after 2006, when she believed father went to prison. On April 25, 2009, she received a message that consisted of rapid gunfire sounds, “like an AK-47,” without any voice. She conceded that the message could have been left by someone other than father, such as a friend or relative of father's. She has received other calls since then, and recognized the voice as father's based on the prior telephone calls he made. On cross-examination, when asked if father's voice in court was the same voice she heard on the telephone calls, she responded, “Yes, I would say it is.”

Following the testimony, the court inquired as to why the restraining order included father's two biological children, who did not live with Patricia. Patricia's

attorney responded that her client's concern was that father was trying to use her to locate his own children, since all three children had sibling visits. The court stated that it had no reason to disbelieve Patricia's testimony that father called and threatened her, and issued the restraining order for a three-year period. While the court stated that it was unsure of its authority to issue a restraining order involving father's two children, since they had been freed for adoption, the court added that father had no business having contact with them in any event, and that therefore the restraining order should not interfere with his life "whatsoever." This appeal followed.

DISCUSSION

Father argues that there was insufficient evidence to support the issuance of a restraining order against him and that the order was overbroad.² We disagree.

In reviewing the sufficiency of the evidence, our review requires that all reasonable inferences be given to support the findings and orders of the dependency court and that the record must be viewed in the light most favorable to those orders. Those findings and orders may not be disturbed if they are supported by substantial evidence, contradicted or not. (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1226–1227.) Moreover, issues of fact and credibility are questions of fact for the trial court, not this court. (*Ibid.*; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

Pursuant to Welfare and Institutions Code section 213.5 and rule 5.630 of the California Rules of Court, until the termination of dependency jurisdiction, the dependency court may issue a restraining order protecting a child who is the subject of the dependency petition or who is declared a dependent, as well as the caregiver. When the order is made after notice and hearing, "[p]roof may be by the application and any attachments, additional declarations or documentary evidence, the contents of the juvenile court file, testimony, or any combination of these." (Cal. Rules of Court,

² Respondent does not dispute appellant's contention that he has standing to appeal as both a party of record and an aggrieved party.

rule 5.630 (h)(2).) The dependency court shall also consider prior restraining orders issued against the person and any violations of those orders. (Welf. & Inst. Code, § 213.5, subd. (k)(2); *In re Cassandra B.* (2004) 125 Cal.App.4th 199, 209.)

Here, the dependency court found Patricia's testimony that father called and threatened her to be credible. Although father attempts to characterize this testimony as "speculative," "dubious," "scant," and "vague," we are not at liberty to reweigh the evidence or to pass on issues of credibility. (*In re Tanis H.*, *supra*, 59 Cal.App.4th at pp. 1226–1227.) Based on father's past history of threatening Patricia, the fact that the absence of the threats generally coincided with father's time in prison, that guns had been shot off in father's home in front of a child, and Patricia's identification of father's voice in the current set of threats, we are satisfied that substantial evidence supports the issuance of the permanent restraining order. We give no credence to father's argument that just because he had not already "physically intimidate[d]" Patricia, that he would not attempt to do so, given his threats.

Father argues that in any event, the restraining order was overbroad because it included his two children who did not reside with Patricia, and that a stay away order from Patricia would have been more appropriate. He argues that had the prospective adoptive mother of his children wanted to allow visits between him and the children, the restraining order would prevent him from doing so. But father presented no evidence that the prospective adoptive parent was willing to allow further contact between father and the children. Indeed, the trial court instructed father's attorney to explain to him the consequences of having his parental rights terminated. Moreover, the record established that father's children lived within a few blocks of their half-sibling and that all three children enjoyed almost daily contact. Because all three children spent so much time together, the dependency court properly included them in the restraining order.

DISPOSITION

The dependency court's June 10, 2009 restraining order against father is affirmed.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST